TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 246.

THE PEOPLE OF THE STATE OF NEW YORK EX REL. THE BANK OF NEW YORK NATIONAL BANKING ASSOCIATION, PLAINTIFF IN ERROR,

vs.

RICHARD B. CONNOLLY, COMPTROLLER, AND JOHN T. HOFFMAN, MAYOR, &c., ET AL.

IN ERROR TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

FILED JANUARY 11, 1905.

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1 The answer of the judges of the Court of Appeals of the State of New York, in the within writ named, doth certify, under the seal of our said court, to the justices of the Supreme Court of the United States, at the Capitol, in the city of Washington, and send the record whereof mentioned in said writ is made, with all things touching or in anywise concerning the same, as appears in a certain schedule to this writ annexed, as within it is commanded.

By the court:

Dec. 9th, 1867:

[SEAL.]

C. H. YOUNG,
Deputy Clerk of the Court of Appeals of the State of New York.

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the judges of the Court of Appeals of the State of New York, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said Court of Appeals before you between The People of the State of New York *ex rel.* The Bank of New York National Banking Association, and Richard B. Connolly, comptroller of the city of New York, John T. Hoffman, mayor of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York, a manifest error hath happened, to the great damage of the said relators, as by their complaint
3 appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then under your seal distinctly and openly you send the record and the proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the ninth day of January, 1866, instant, in the said Supreme Court to be then and there holden, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States ought to be done.

Witness Hon. Salmon P. Chase, Chief Justice of the Su-
4 preme Court of the United States, this fourth day of January, A. D. eighteen hundred and sixty-eight, and of the independence of the United States the ninety-first.

[SEAL.] KENNETH G. WHITE, *Clerk.*

Endorsed: Supreme Court of the United States. The People of the State of New York *ex rel.* The Bank of N. Y. National Banking Association, pl'ffs in error, *against* Richard B. Connolly, comptroller, &c., and others, def'ts in error. Writ of error. Wheeler H. Peckham, att'y for pl'ff in error, 18 Wall st., N. York city.

5 UNITED STATES OF AMERICA, *ss*:

To Richard B. Connolly, comptroller of the city of New York, John T. Hoffman, mayor of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the ninth day of January, instant, pursuant to a writ of error filed in the clerk's office of the Court of Appeals of the State of New York, wherein The People of the State of New York *ex rel.* The Bank of New York National Banking Association, are plaintiff, and you are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected
6 and speedy justice should not be done to the parties in that behalf.

Witness the Honorable William B. Wright, chief justice of the Court of Appeals of the State of New York, this day of January, A. D. 1868.

WM. B. WRIGHT,
Ch. Judge of Court of Appeals of State of New York.

I agree to the short return day of the writ of error and citation, and hereby admit due service of the foregoing citation by copy.
Ja'y 7th, 1868.

RICHARD O'GORMAN,
Attorney for Defendants.

Endorsed: Supreme Court of the United States. The People of the State of N. Y. *ex rel.* The Bank of N. Y. National Banking Association, *against* Richard B. Connolly, comptroller, &c., and others. Citation. Wheeler H. Peckham, att'y for pl'ffs in error, 18 Wall st., N. York City.

7 Supreme Court of the United States.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* the Bank of New York National Banking Association *ag'st* RICHARD B. CONNOLLY, COMPTROLLER OF the city of New York, JOHN T. HOFFMAN, mayor of the city of New York, and JOSEPH B. YOUNG, clerk of the board of supervisors of the county of New York.	In error.

Know all men by these presents, that we, George M. Miller and John A. Stoutenburgh, of the city of New York, are held and firmly bound unto the above Richard B. Connolly, comptroller of the

city of New York, John T. Hoffman, mayor of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York, in the sum of one thousand dollars to be paid to the said Richard B. Connolly, comptroller of the city of New
8 York, John T. Hoffman, mayor of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York, their successors, &c., to which payment well and truly to be made we bind ourselves; and each of us, jointly and severally, and our and each of our heirs, executors, administrators, and assigns firmly by these presents.

Sealed with our seals and dated the fourth day of January, 1868.

Whereas the plaintiff above named hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the Court of Appeals of the State of New York:

Now, therefore, the condition of this obligation is such that if the above-named plaintiffs shall prosecute their said writ of error to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void, otherwise the same shall remain and be in full force and virtue.

9 [L. S.] (S'd) GEORGE M. MILLER.
[L. S.] J. A. STOUTENBURGH.

STATE OF NEW YORK, *City and County of New York, ss*:

George M. Miller and John A. Stoutenburgh, the subscribers to the foregoing undertaking, being duly sworn, say, and each for himself says, that he is a resident and freeholder within this State, and is worth the sum of two thousand dollars over and above all his debts and liabilities, and besides his property by law exempt from execution.

(S'd) GEORGE M. MILLER.
J. A. STOUTENBURGH.

Sworn to before me this 4th day of January, 1868.

GEO. D. PHELPS, JR.,
Notary Public, N. Y.

STATE OF NEW YORK, *City and County of New York, ss:*

On this fourth day of January, A. D. one thousand eight hundred and sixty-eight, before me came George M. Miller and John
10 A. Stoutenburgh, known to me to be the persons described in and who executed the above undertaking, and severally acknowledged that they executed the same.

GEO. D. PHELPS, JR.,
Notary Public, N. Y. City.

Endorsed: Supreme Court of the United States. The People of the State of New York *ex rel.* The Bank of New York National Banking Association against Richard B. Connolly, comptroller, &c, *et al.* Copy bond on writ of error. Approved, Wm. B. Wright, ch. judge Court of Appeals. Wheeler H. Peckham, at'y for pl'ffs in error.

11 At a term of the Court of Appeals of the State of New York, held at the capitol in the city of Albany, on the thirty-first day of December, 1867:

Present: Hon. Henry E. Davies, chief judge, presiding.

THE PEOPLE OF THE STATE OF NEW YORK on the relation of the Bank of New York National Banking Association, appellant,

v.

RICHARD B. CONOLLY, COMPTROLLER OF the city of New York, John T. Hoffman, mayor of the city of New York, and Joseph R. Young, clerk of the board of supervisors of the county of New York.

The appeal in this cause having been argued by Mr. Wm. H. Peckham, of counsel for relator, and by Mr. Richard O'Gorman, of counsel for defendants, respondents, and due deliberation being had thereon, it is ordered that the judgment of the Supreme Court appealed from be in all things affirmed with costs to the defendants, respondents.

12 And it is certified that on the hearing of this cause there was drawn in question in said action the validity of a statute of, and on authority exercised under, the State of New York, on the ground of its being repugnant to the Constitution and laws of the United States, and the decision was in favor of their validity, and also that there was drawn in question the construction of the clause of the Constitution authorizing Congress to borrow money on the credit of the United States, and of certain statutes of the United States exempting certain securities from taxation by State authority, and the decision was against the right, title, privilege and exemption claimed by the appellants under such clause of the Constitution and such statutes.

C. H. YOUNG,
Deputy Clerk.

13 Pleas before the Supreme Court of the State of New York, at a special term thereof, held at the City Hall, in and for the county of New York, on the fourteenth day of March, 1867. Witness Hon. D. P. Ingraham, justice.

WILLIAM C. CONNER, *Clerk.*

[U. S. revenue stamp, 50 cents, cancelled.]

The People of the State of New York to Richard B. Connolly, comptroller of the city of New York, John T. Hoffman, mayor of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York:

Whereas, during the years 1863 and 1864, and for many years prior thereto, the Bank of New York was a banking corporation duly

organized under the laws of the State of New York, and doing business in the city of New York, and so continued until in the year 1865, when, pursuant to the laws of the United States and of this State, the said bank duly decided to become a banking association under the laws of the United States, and thereupon did, in or about the month of July, 1865, duly organize as a banking association, under the laws of the United States, under the name and style of the Bank of New York National Banking Association, and located in the city of New York, and has ever since continued to do business in said city as such banking association;

And whereas, during the years 1863 and 1864, the said Bank of New York paid taxes in and to the county of New York to a very large amount, to wit, in about the sum of one hundred thousand
14 dollars, and the capital of said bank during both of said years was three million dollars, and a large proportion of said capital was during said years invested in certain securities of the United States by the Constitution and laws of the United States exempt from State taxation;

And whereas, pursuant to the statute of this State passed April 3d, 1866, entitled "An act to provide for refunding to various banks and insurance companies in the city of New York, the taxes of the years 1863 and 1864, imposed or paid or collected upon that portion of their capital invested in securities of the United States by law exempt from taxation;" the said bank, in the month of December, 1866, and January, 1867, did present to the board of supervisors of the county of New York the claims of said bank for an issue of bonds under said act;

And whereas said board of supervisors of the county of New York did audit and allow to said bank its claims for taxes paid on certain descriptions of United States securities to the amount and in the sum of forty-nine thousand five hundred and eighty-four dollars and seventy-four cents, of which sum and amount thirteen thousand and eighty-three dollars and fifty-seven cents were audited and allowed by said board for the refunding of the taxes so paid in the year 1863, and thirty-six thousand five hundred and one dollars and seventeen cents were audited and allowed by said board for the refunding of the taxes so paid in the year 1864;

And whereas, in the year 1863, twenty thousand dollars of the capital of said bank was invested in the United States security known as certificates of indebtedness, issued under the acts of Congress entitled "An act to authorize the Secretary of the Treasury to issue certificates of indebtedness to public creditors," approved March 1st, 1862; and the act of Congress entitled "An act to authorize the purchase of coin, and for other purposes," approved March 17, 1862;

And whereas the said bank in said year paid taxes in said county on said sum of twenty thousand dollars of its capital so in-
15 vested as aforesaid, and the rate of taxation in said year was 2.035 per cent., making the amount of taxes paid in said year by said bank on that portion of its capital so invested in United States certificates of indebtedness, the sum of four hundred and

seventy dollars, and said sum of four hundred and seventy dollars was included in the amount of thirteen thousand and eighty-three dollars and fifty-seven cents, so allowed and audited by said board to the said bank for taxes paid as aforesaid in the year 1883;

And whereas, in the year 1864 three hundred and fourteen thousand dollars of the capital of said bank was invested in the said United States certificates of indebtedness, and said bank in said year paid taxes in the said county of New York on said sum of three hundred and fourteen thousand dollars of its capital so invested as aforesaid, and the rate of taxation in said year was 2-16 per cent., making the amount of taxes paid by said bank in said year on that portion of its capital so invested in said United States securities, known as certificates of indebtedness, the sum of six thousand seven hundred and eighty-two dollars and forty cents; and said sum of six thousand seven hundred and eighty-two dollars and forty cents was included in the amount of thirty-six thousand five hundred and one dollars and seventeen cents, so allowed and audited by said board to said bank for taxes paid as aforesaid, in the year 1864;

And whereas interest on said sum of four hundred and seventy dollars from October 7, 1863, to May 1, 1866, and on said sum of six thousand seven hundred and eighty-two dollars and forty cents from October 12, 1864, to May 1, 1866, was admitted and allowed by said board, the said interest on the said four hundred and seventy dollars, amounting to eighty-four dollars and forty-four cents, and the said interest on the six thousand seven hundred and eighty-two dollars and forty cents, amounting to seven hundred and thirty-seven dollars and twenty-one cents;

And whereas out of the said sum of forty-nine thousand five hundred and eighty-four dollars and seventy-four cents, so audited and allowed by said board to said bank, the sum of eight thousand and seventy-four dollars and five cents only, including principal and interest, was audited and allowed on account of taxes paid in those years on that portion of its capital invested in the said United States securities known as certificates of indebtedness;

16

And whereas the amount paid by said bank for taxes in the years 1863 and 1864 upon such portions of its capital stock as was invested in certain securities of the United States by law exempt from taxation, together with the amount claimed for costs, charges, and interest, have been duly audited and allowed by the said board of supervisors of the county of New York at the said sum of forty-nine thousand five hundred and eighty-four dollars and seventy-four cents;

And whereas said auditing and allowance were duly submitted to the mayor and corporation counsel of the city and county of New York, and were by said mayor and said corporation counsel respectively duly approved;

And whereas said board of supervisors of the county of New York has duly, by resolution passed in the usual manner, provided for the issue of the bonds in the said act mentioned, and has fixed and determined the nominal amount of such bond; and whereas said bonds, in

accordance therewith, have been duly prepared by the comptroller;

And whereas, notwithstanding such auditing and allowance and approval as aforesaid, and notwithstanding all and singular the matters aforesaid, you, the said Richard B. Connolly, comptroller of the city of New York, refuse to sign said bonds; and you, John T. Hoffman, mayor of the city of New York, refuse to countersign said bonds; and you, the said Joseph B. Young, having the custody of the seal of the board of supervisors of the county of New York, refuse to affix said common seal to said bonds, or to attest the same; and you, the said Richard B. Connolly, comptroller as aforesaid, refuse to deliver said bonds to the said Bank of New York National Banking Association, as we are informed by the complaint
17 of the Bank of New York National Banking Association, and which complaint we have adjudged to be true, as appears to us of record:

We, therefore, being willing that speedy justice should be done in this behalf, do command and finally enjoin you, the said Richard B. Connolly, comptroller; and you, the said John T. Hoffman, mayor; and you, the said Joseph B. Young, clerk of the board of supervisors, that immediately after the receipt of this writ, you, the said Richard B. Connolly, comptroller as aforesaid, do proceed to sign the said bonds; and you, the said John T. Hoffman, mayor as aforesaid, do proceed to countersign the said bonds; and you, the said Joseph B. Young, clerk as aforesaid, do proceed to affix to said bonds the common seal of the board of supervisors of the county of New York, and to duly attest the same; and you, the said Richard B. Connolly, comptroller as aforesaid, do proceed to deliver the said bonds to the Bank of New York National Banking Association, or to signify to us the cause why you cannot or will not so do, least in your default complaint should again come to us.

And how you shall have executed this our writ make known to our Supreme Court, at a special term thereof, to be held in the City Hall, in and for the county of New York, in the city of New York, on the 14th day of March, 1867, and have you then and there this writ.

Witness Hon. William H. Leonard, presiding justice of our Supreme Court, at the City Hall, in the city of New York, this 11th day of March, 1867.

By the court.

[L. S.] WM. C. CONNER, *Clerk.*

Miller, Stoutenburgh & Peckham, attorneys, &c., for relators, 18 Wall street.

18 *The answer of Richard B. Connolly, comptroller of the city of New York, and John T. Hoffman, mayor thereof, and Joseph B. Young, clerk of the board of supervisors of the county of New York, to the alternative writ of mandamus within mentioned.*

We, Richard B. Connolly, comptroller of the city of New York; John T. Hoffman, mayor thereof; and Joseph B. Young, clerk of the

board of supervisors of the county of New York, do answer and return to the Supreme Court:

That of the capital of said relator in respect to which the taxes for the years 1863 and 1864 were imposed upon and collected from said bank, a large sum was invested in "certificates of indebtedness" issued under and pursuant to the provisions of the act of Congress of the United States approved March 1st, 1862; and certificates issued pursuant to the act of Congress approved March 17, 1862, recited in said writ:

That in the audit and allowance of the claim of said relator, as is recited in said alternative writ, the said board of supervisors did audit and allow to said relator the amount of taxes imposed upon it for and in respect to the amount of its capital so invested in said certificates of indebtedness.

The respondents claim that said certificates are not "securities of the United States by law exempt from taxation," and therefore claim that the said audit and allowance of the claim of said relators, so far as it includes the amount of tax imposed upon said bank in respect to that portion of its capital invested in said "certificates of indebtedness," was unauthorized by the said act of April 30, 1866, and therefore was illegal and void.

March 12, 1867.

RICHARD B. CONNOLLY,
Comptroller.
JOHN T. HOFFMAN,
Mayor.
JOSEPH B. YOUNG,
Clerk of Board of Supervisors.
RICHARD O'GORMON,
Counsel to Corporation, Att'y for Respondents.

19 Supreme Court.—County of New York.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* The Bank of New York National Banking Association
ag'st
RICHARD B. CONNOLLY, COMPTROLLER, AND John T. Hoffman, mayor of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York.

And the said the Bank of New York National Banking Association, the relator in this writ, by Miller, Stoutenburgh & Peckham, its attorneys, says, that the said plaintiff says, that the said return by the said Richard B. Connolly, comptroller, and John T. Hoffman, mayor of the city of New York, and the said Joseph B. Young, clerk of the board of supervisors of the county of New York, made to the alternative writ of mandamus, is not sufficient in law to quash the said writ,

and that the matters and things therein contained are not sufficient in law to bar or preclude the relator from demanding of you, the said Richard B. Connolly, comptroller as aforesaid, the signing; and of you the said John T. Hoffman, mayor as aforesaid, the countersigning; and of you the said Joseph B. Young, clerk as aforesaid, the attesting and affixing the said common seal; and of you the said Richard Connolly, comptroller as aforesaid, the delivery of the said bonds, or from demanding of you, and each of you, the doing of all and singular the matters and things in the said writ set forth; and this the plaintiff and relator is ready to verify.

Wherefore the relator prays judgment for want of a sufficient return in this behalf, and that a peremptory writ issue, com-
20 manding the said defendants to do and perform the matters and things in the said alternative writ mentioned.

MILLER, STOUTENBURGH & PECKAM,
Plaintiff's Attorneys.

And the defendants say, that the said return of the said defendants, and the matters therein contained, are sufficient in law to quash the said writ, and to bar and preclude the said relator from having and maintaining the aforesaid writ; and this the said defendants are ready to verify and prove at such time and place, and in such manner as the court shall award.

Wherefore, inasmuch as the said relator hath not answered the said return, or in any manner denied the same, these defendants pray judgment for their costs, and that the said writ may be quashed.

RICHARD O'GORMAN,
Att'y for Defendant.

At a special term of the Supreme Court, held in and for the county of New York, at the City Hall, in the city of New York, on the fourteenth day of March, 1867.

Present: Hon. D. P. Ingraham, Justice.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* The Bank of New York National Banking Association
ag'st
RICHARD B. CONNOLLY, COMPTROLLER, *et al.*

This cause having come on to be heard on the alternative writ of mandamus, and the return thereto, and the demurrer to the return and joinder in demurrer, and on the issue of law thereby raised, and after hearing Mr. Peckham for the relator, and Mr. Dean for
21 the defendant, it is ordered that the demurrer be, and the same is hereby overruled; and that the defendants have judgment against the relator, with ten dollars costs.

Ordered further, that all proceedings on the said judgment be stayed until the decision of the general term, provided an appeal be taken with ten days.

Enter. D. P. I.

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* The Bank of New York National Banking Association
ag'st
RICHARD B. CONNOLLY, COMPTROLLER OF THE city of New York, John T. Hoffman, mayor of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York.

And now, this day, before the said Supreme Court came the parties aforesaid, and it appearing that upon the alternative writ of mandamus and the return thereto, and the demurrer to the return and joinder in said demurrer, and a hearing had thereon, the said demurrer was overruled, and judgment ordered for the defendants for ten dollars costs.

Now, therefore, on motion of Richard O'Gorman, defendant's attorney, it is considered and adjudged that [that] the said defendants, Richard B. Connolly, comptroller. and John T. Hoffman, mayor of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York do recover of the rela-
22 tor, The Bank of New York National Banking Association, the sum of ten dollars, by them laid out and expended in and about the defence to the said writ of mandamus adjudged to the said defendants by their assent, and that they have execution thereof.

Judgment signed March, 16, 1867.

WM. C. CONNER, *Clerk.*

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* The Bank of New York National Banking Association
ag'st
RICHARD B. CONNOLLY, COMPTROLLER OF THE county of New York, John T. Hoffman, mayor of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York.

You will please take notice, that the plaintiff appeals to the general term of this court from the judgment entered this day in above case in favor of the defendants against the plaintiff for ten dollars costs, and overruling the demurrer of the plaintiff to the return of the defendant.

Dated March 16th, 1857.

Yours, &c.,
MILLER, STOUTENBURGH & PECKHAM,
Plaintiff's Attorneys.

To Richard O'Gorman, esq., attorney for defendants; William C. Conner, esq., clerk Supreme Court.

The court gave no written opinion.

23 At a general term of the Supreme Court of the State of New York, held at the City Hall, in the city of New York, on the twenty-first day of March, 1867.

Present: Hon. William H. Leonard, Josiah Sutherland, Daniel P. Ingraham, justices.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* The Bank of New York National Banking Association, appellants,
ag'st
RICHARD B. CONNOLLY, COMPTROLLER, &c., and others, respondents.

The appeal from the judgment of the special term, in the above cause, having come on for argument before the general term of this court, after hearing Mr. Peckham for the appellants, and Mr. O'Gorman for the respondents, and due deliberation being thereupon had, on motion of Richard O'Gorman, attorney for said respondents, it is ordered and adjudged that the said judgment of the special term be, and the same is hereby, in all things affirmed, with ten dollars costs to the respondents.

Enter.

(Signed) WM. H. L., *P. J.*

24 Supreme Court—County of New York.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* The Bank of New York National Banking Association, appellants,
ag'st
RICHARD B. CONNOLLY, COMPTROLLER OF the city of New York; John T. Hoffman, mayor of the city of New York; and Joseph B. Young, clerk of the board of supervisors of the county of New York, respondents.

The appeal from the judgment of the special term in the above cause having been heard at general term, and an order of the general term having been made, whereby the judgment appealed from was in all things affirmed.

Now, therefore, on motion of Richard O'Gorman, attorney for respondents, it is considered and adjudged that the said judgment be, and the same is hereby, in all things affirmed; and that the defendants do recover of the said relator the sum as in said judgment appealed from expressed. and the sum of ten dollars costs of this appeal, adjudged to the said defendants, by their assent, and that they have execution thereof.

Judgment signed March 21, 1867.

(Signed) WM. C. CONNER, *Clerk.*

Endorsed: "Filed March 21, 1867, at 10 o'clock and 43 minutes."

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* The Bank of New York National Banking Association
ag'st
RICHARD B. CONNOLLY, COMPTROLLER OF THE city of New York, John T. Hoffman, mayor of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York.

And now, this day, before the said Supreme Court came the parties aforesaid, and it appearing that upon the alternative writ of mandamus and the return thereto, and the demurrer to the return and joinder in said demurrer, and a hearing had thereon, the said demurrer was overruled, and judgment ordered for the defendants for ten dollars costs.

Now, therefore, on motion of Richard O'Gorman, defendant's attorney, it is considered and adjudged that [that] the said defendants, Richard B. Connolly, comptroller, and John T. Hoffman, mayor of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York do recover of the relator, The Bank of New York National Banking Association, the sum of ten dollars, by them laid out and expended in and about the defence to the said writ of mandamus adjudged to the said defendants by their assent, and that they have execution thereof.

22

Judgment signed March, 16, 1867.

WM. C. CONNER, *Clerk.*

Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* The Bank of New York National Banking Association
ag'st
RICHARD B. CONNOLLY, COMPTROLLER OF THE county of New York, John T. Hoffman, mayor of the city of New York, and Joseph B. Young, clerk of the board of supervisors of the county of New York.

You will please take notice, that the plaintiff appeals to the general term of this court from the judgment entered this day in above case in favor of the defendants against the plaintiff for ten dollars costs, and overruling the demurrer of the plaintiff to the return of the defendant.

Dated March 16th, 1857.

Yours, &c.,
MILLER, STOUTENBURGH & PECKHAM,
Plaintiff's Attorneys.

To Richard O'Gorman, esq., attorney for defendants; William C. Conner, esq., clerk Supreme Court.

The court gave no written opinion.

23 At a general term of the Supreme Court of the State of New York, held at the City Hall, in the city of New York, on the twenty-first day of March, 1867.

Present: Hon. William H. Leonard, Josiah Sutherland, Daniel P. Ingraham, justices.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* The Bank of New York National Banking Association, appellants,
ag'st
RICHARD B. CONNOLLY, COMPTROLLER, &c., and others, respondents.

The appeal from the judgment of the special term, in the above cause, having come on for argument before the general term of this court, after hearing Mr. Peckham for the appellants, and Mr. O'Gorman for the respondents, and due deliberation being thereupon had, on motion of Richard O'Gorman, attorney for said respondents, it is ordered and adjudged that the said judgment of the special term be, and the same is hereby, in all things affirmed, with ten dollars costs to the respondents.

Enter.

(Signed) WM. H. L., *P. J.*

24 Supreme Court—County of New York.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* The Bank of New York National Banking Association, appellants,
ag'st
RICHARD B. CONNOLLY, COMPTROLLER OF the city of New York; John T. Hoffman, mayor of the city of New York; and Joseph B. Young, clerk of the board of supervisors of the county of New York, respondents.

The appeal from the judgment of the special term in the above cause having been heard at general term, and an order of the general term having been made, whereby the judgment appealed from was in all things affirmed.

Now, therefore, on motion of Richard O'Gorman, attorney for respondents, it is considered and adjudged that the said judgment be, and the same is hereby, in all things affirmed; and that the defendants do recover of the said relator the sum as in said judgment appealed from expressed, and the sum of ten dollars costs of this appeal, adjudged to the said defendants, by their assent, and that they have execution thereof.

Judgment signed March 21, 1867.

(Signed) WM. C. CONNER, *Clerk.*

Endorsed: "Filed March 21, 1867, at 10 o'clock and 43 minutes."

25 Supreme Court.

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* The Bank of New York National Banking Association
ag'st
RICHARD B. CONNOLLY, COMPTROLLER, &c., and others.

GENTLEMEN : Take notice, that the plaintiff appeals to the Court of Appeals from a judgment of this court in above action, entered on the direction of the general term, affirming the judgment of the special term, and for ten dollars costs.

March 21, 1867.

Yours, &c., MILLER, STOUTENBURGH & PECKHAM,
Attorneys for Plaintiff.

To Richard O'Gorman, esq., defendants' attorney.
William C. Conner, esq., clerk Supreme Court.

STATE OF NEW YORK, *City and County of New York, ss:*

I, William C. Connor, clerk of the Supreme Court of said State, in and for said city and county, do hereby certify that the preceding consists of certified copies of the notice of appeal, the judgment roll appealed from, and the papers on which the court below acted in making such order and judgment.

In witness whereof I have hereunto subscribed my name, and affixed my official seal, this 21st day of March, 1867.

[L. S.]

(Signed) WILLIAM C. CONNER, *Clerk.*

The general term gave no written opinion.

O

Wm. J. Read, Law and Job Printer, 111 Fulton Street, New York.

Supreme Court of the U. S.

The People of the State of New York, *ex rel.*, the Bank of New York National Banking Association,

against

John T. Hoffman, Mayor of the City of New York, *et al.*

STATEMENT OF CASE.

By Ch. 864 of the Laws of New York of 1866, the Board of Supervisors of the County of New York was authorized and directed to audit and allow to certain banks and insurance companies the amount of taxes they had paid, &c., in the years 1863 and 1864, on that portion of their capital invested in United States securities, by law exempt from taxation, and to issue to such banks and insurance companies certain bonds therefor. *New York Sess. Laws of* 1866, *vol.* II, *p.* 1,996.

They did so, and allowed to the relator the sum of $49,584 74.

To the defendants was by that law assigned the ministerial functions of signing, sealing, delivering, &c., the bond. They refused to execute those functions.

They refused on the ground that the Board of Super-

visors had allowed the taxes paid on United States certificates of indebtedness, and that such certificates were not exempt from taxation by or under State authority.

The relators then obtained an alternative mandamus, to which the respondents plead, and the relators demurred, and the respondents joined in demurrer. In the New York Supreme Court the demurrer was overruled and judgment given for the respondents, and on appeal affirmed in the Court of Appeals.

The plaintiffs then sued out a writ of error to this Court.

The opinion of the Court of Appeals was given in a case *ex rel.* the Broadway Bank, argued at the same time, and is to the effect: 1st. That the certificates are not exempt under the Constitution; and 2d. That even if declared exempt by act of Congress such acts are unconstitutional.

POINTS.

These certificates are issued under two acts of Congress—one approved March 1, 1862, and one March 17, 1862. The following is a copy of the whole of the first act, and of the only section of the other that refers to these certificates.

March 1, 1862: "That the Secretary of the Treasury "be and he is hereby authorized to cause to be issued to "any public creditor who may be desirous to receive the "same, upon requisition of the head of the proper de- "partment, in satisfaction of audited and settled demands "against the United States, certificates for the whole "amounts due or parts thereof, not less than $1,000, "signed by the Treasurer of the United States, and coun- "tersigned, as may be directed, by the Secretary of the "Treasury; which certificate shall be payable in one "year from the date, or earlier, at the option of the Gov- "ernment, and shall bear interest at the rate of six per "centum per annum." 12 *Stat.*, 352.

March 17, 1862: "That the Secretary of the Treasury "may purchase coin with any of the bonds or notes of "the United States authorized by law, at such rates and "upon such terms as he may deem most advantageous to "the public interest; and may issue, under such rules "and regulations as he may prescribe, certificates of in- "debtedness, such as are authorized by an act, entitled "'An act,' &c. (referring to preceding act), to such cred- "itors as may desire to receive the same, in discharge of "checks drawn by disbursing officers upon sums placed "to their credit on the books of the Treasurer, upon re- "quisitions of the proper departments, as well as in dis- "charge of audited and settled accounts, as provided by "said act." *Ib., p.* 370.

First.—The "*credit*" of the United States is exempt from taxation under State authority.

(*a*) This credit, which is exempt, is entirely distinct from the forms in which it may be expressed, and from the instruments or evidence which may *prove* that it has been pledged.

It is not these instruments or this evidence which are exempt; it is the *credit*, which by and through them, is pledged; it is the power to borrow money on the *credit* of the United States; it is the *use* of the *credit* of the United States which are exempt, and not any peculiar *form* of contract or *style* of expression. This exemption is constitutional, and independent of any act of Congress.

In *Weston* v. *City of Charleston*, 2*d Peters*, 449, a tax of one-quarter of one per cent. had been assessed by the City of Charleston on certain descriptions of securities, which had or would pay interest during the year, among which were specified six and seven per cent. stock of the United States.

The constitutional Court of South Carolina sustained the tax, by a majority of four to three. HUGER, *J.*, for

the minority, expressed their objections to the constitutionality of the tax as follows:

1. Because a tax on the stock of the United States, *eo nomine*, is a tax upon the credit of the United States.

2. Because the credit of the United States was not a subject for taxation by the States anterior to the adoption of the Constitution: the credit of the United States being a result of the establishment of the Government of the United States; and the Constitution has given no new powers to the State Governments.

3. Because the objects of taxation by the State Government are not diminished by withholding from them the power of taxing stock of the United States, as the money borrowed by the United States is immediately, by disbursements, returned to the people of the different States.

4. Because it renders the General Government dependent upon the discretion of the State Governments for one of its essential means of accomplishing the purposes for which it was established; a result at variance with one of the principal objects of the Constitution, which was to render the General Government independent of the pecuniary aid of the State Governments. (*See 2d Peters*, 456–7.)

All these propositions are clearly sound; the third not less so, in that a wrong reason is given. The money is not given back to the people in the way of disbursements. It may be disbursed, but the people give other property for it, and that property is used or destroyed. Governments collect taxes, not for production, but for *use* and *consumption*. The money is converted into pork, powder, &c., which are used. No government collects more taxes than it uses in current consumption. (*See McCulloch on*

Taxation, p. 399, *Ed. of* 1845; *Hume's Essays on Public Credit, p.* 296, *Ed. of* 1736; 1 *Blackstone Com.*, 327.)

MARSHALL, *Ch. J.*, in giving the opinion of the Supreme Court, stated the question to be: "Is the stock *issued for* "*loans made to the Government of the United States* liable "to be taxed by States and corporations?" (p. 465.)

He then says: "Congress has power to borrow money "on the credit of the United States. The stock it issues "is the *evidence of a debt* created by the exercise of this "power. The tax in question is a tax upon the contract "subsisting between the Government and the individual. "It bears directly upon that contract while subsisting "and in full force. The power operates upon the con- "tract the instant *it is framed*, and must imply a right to "affect that contract. If the States possess the power "to tax a contract for the loan of money, what shall "arrest this principle in *its application to every other* "*contract?*"

The learned Justice then goes on to show, in the most conclusive manner, that a tax on the stocks is a tax on the *power* to borrow money on the credit of the United States; that "the right to tax the contract, to any extent, when made, *must operate* upon the power to borrow before it is exercised, and have a sensible influence on the contract" (p. 468).

When it was suggested that *lands sold* were in the same position as public *lands sold*, and that, if such lands were taxable, bonds were, the Chief Justice, in repudiating the inference, said: "Lands sold are in the con- "dition of money borrowed *and repaid*. Its liability to "taxation, in any form it may then assume, is not question- "ed. The connexion between the borrower and the lender "is dissolved. It is no burthen on loans—it is no impedi- "ment to the power of borrowing—that the *money, when* "repaid, loses its exemption from taxation. But a tax "upon *debts* due from the Government stands, we think, "on very different principles from a tax on lands which "the Government has sold" (p. 469). And concludes: "The tax on Government stock is thought by this Court "to be a tax on the *power to borrow money on the credit of*

" *the United States*, and, consequently, to be repugnant to " the Constitution."

It thus appears, that exemption was not given in that case because the evidence of the debt was a "*bond*" or was "stocks," but because it was a "*debt*" of the United States—because, to tax them, *when issued*, would operate upon the power to borrow *before issued*—because it is a tax upon a *contract* made by the United States.

The exemption was given to the "*credit*" of the United States, and to the power to *borrow* on that *credit*.

Cases must be decided on *some* principle. No other principle can be extracted from the case of Weston but that of the exemption of the "*credit*" of the United States of the *power* of borrowing by the United States, *and* that a tax on *any contract* by which such borrowing is evidenced operates on the *power* to borrow before the contract is made, and, for that reason, cannot be sustained.

In the *Bank of Commerce* case, 2*d Black.*, 620, the capital of the bank was invested in "stocks, bonds and securities" of the United States, and they were held exempt on the same principle. This case was argued and decided at the same time with several others, and though the act of February 25th, 1862, might have applied to it (it being for a tax levied after the passage of that act), it could not to the others, which were for taxes levied prior. (*See Bank of Commonwealth case*, 32*d Barb.*, 509; 23*d New York*, 192, *and note to Bank of Commerce case*, 2*d Black*, 635.)

It is probably for that reason that the opinion makes no mention of the act, but decides the case strictly on constitutional grounds.

The doctrine of these cases is reaffirmed in *The Bank Tax Case*, 2 *Wallace*, 200, and in *Van Allen* v. *The Assessors*, 3 *Wallace*, 573.

They all rest on the broad constitutional principle that the credit of the United States is exempt from State taxation.

In whatever *form* we find that credit the principle must be applied.

(*b*) Aside from authority, it is apparent to any one in the least degree familiar with the truths of political economy that *credit* cannot be taxed and *can pay no tax*. If the credit of the United States is taxed through its bonds or other securities, the only effect is that on a sale or issue of those bonds the United States realizes so much less. The deficiency, whatever it was, the United States would have to raise by a further tax or a further loan, and the result would be a complete loss of precisely the expense of collecting the tax. To be precise, suppose $1,000,000 wanted; not taxed, the bonds sell say at par; taxed, they sell two per cent. less. Now, this $20,000 which goes to the State must be raised either by a tax by the United States, or by a further loan. If by a tax, the United States loses just the expense of collection; if by a loan, it loses temporarily the whole $20,000, and ultimately the same expense of collecting the tax to repay it.

And the State *gains nothing*, for it costs it as much to collect its tax through the holders of United States securities as in any other way.

For a fuller discussion of this point, I respectfully refer the Court to my brief in No. 407, *People, ex rel., Bank of New York*, agst. *Board of Supervisors of the County of New York*.

Second.—These certificates are clearly within the principle of exemption hereinbefore stated.

The Court below put its decision on the ground that these certificates "were not issued to obtain either money "or materials, but were to be issued as a means of payment "at a subsequent day for what had already been received "and spent by the Government." "They cannot come "under the head of borrowing money, &c., &c. They

"are simply claims of a creditor against a debtor, and "against one who cannot be sued."

The Court acquiesces in the prior decisions of this Court, but says that "this Court has never yet decided "that a certificate or statement of a *past indebtedness*, "which is property in the hands of a citizen, * * * is "a necessary instrumentality of the Government, and "thus exempt from taxation." It says further, "There "is no particular virtue in the written statement or cer- "tificate—it simply affords ready proof of the debt, but "does not alter its character."

The Court then says, "that if years before the Govern- "ment had purchased property of an individual for which "it yet owed the purchase-money, but had given no "certificate or evidence of the debt, it would hardly be "pretended that such debt could not be taxed by the "State as against the seller."

The Court thus seems to put its decision on the ground that these certificates are a mere certificate of a debt that had already come into existence, and which would have been taxable had the certificate not been given.

I contend that the Court is clearly in error on both grounds:—1st. The certificates are not *mere* certificates of a pre-existing indebtedness. 2d. The pre-existing indebtedness was itself not taxable.

1st. They are given to creditors having *debts due* them from the United States. These debts such creditors are entitled to have paid. Suppose them to be paid, and then suppose the creditors to immediately turn around and loan the money to the United States, on certificates of indebtedness or any other evidences of debt. That would clearly be a loan and not taxable, as conceded by the Court below.

Now, the acts under which these certificates are issued simply avoid this red tape circumlocution. The certificates are issued only to those creditors who are desirous of receiving the same. They extend the time of pay-

ment one year at the option of Government; they bear interest at the rate of six per cent. per annum; without them the debt would be payable immediately and without interest. It is thus not only in name, but in substance and effect, a *new contract*. It is not a mere certificate of a pre-existing indebtedness. That pre-existing indebtedness was already certified to by the audited and settled demands, under one act, and by check of the disbursing officer, under the other.

In asking for this loan or extension of time the United States must be presumed to have wanted it, to have preferred that its creditors should elect to take the certificates.

It is clear that the only way State taxation can effect United States loans, is by raising the rate of interest at which they can be negotiated, unless carried to such extreme as to prevent their negotiation at all.

Is it not clear then that in negotiating this new contract for an extension of time on interest, instead of a present payment, the right of a State to tax the contract to be made must directly effect that negotiation, and consequently the terms of the contract?

In the language of *C. J.* MARSHALL, "The right to tax "the contract to any extent when made, must operate "upon *the power to borrow before* it is exercised, and have "a sensible influence on the contract." 2 *Peters*, 468.

Or, speaking in the concrete, the right to tax these certificates after they are issued, must operate on the power of the Government to procure their acceptance by the public creditors before they are issued, and must have a sensible influence on that power.

If the Government gave a *mere* certificate that it was indebted to the payee in a certain amount, which was merely evidence in the nature of an *admission*, there would be *some* ground for the position of the Court below. In such case there would be *no* action on the part of the creditor; he would make no new contract; the Government would have made him no offer, and there would have been nothing for the creditor to accept or reject—nothing to be affected by any right of taxation in a State.

But the case is not so—the Government makes an offer. The creditor has the option to accept or reject it. This asserted right of the State must necessarily affect him in the exercise of that option, and if carried to excess will most certainly cause him to reject it.

According to the position of the Court below, if A holds B's note for $1,000, and it is due and renewed, the renewal is not a new contract, but a mere acknowledgment of indebtedness. If A and B had mutual dealings and an account is stated, and one gives his note at one year, on interest, for the balance, the note is not a new contract, but a mere acknowledgment of indebtedness.

If A sells B certain property for cash, but after the property is delivered, agrees to take his note for one year on interest,—that too, is a mere acknowledgment of a debt.

If on the sale B had paid for the property, and *immediately* turned around and borrowed the purchase money on a similar note—that would be a *loan*, a *new contract*—but if they waive the troublesome and childish form of passing and re-passing the money, it is a mere acknowledgment of indebtedness.

If the United States pays these creditors in one building, and then immediately in another building borrows of them the money so paid, on these same certificates of indebtedness—*that is a loan, and not taxable.* If the United States offers them these certificates in the same building or place to which they go to receive their money, and they conclude instead of receiving it, to loan it for a year at 6 per cent., and take these certificates as evidence of such new contract—*that is mere acknowledgment of indebtedness, and taxable.*

A distinction of this kind seems hardly worthy of the high character of the Court, from which it emanates. It is hardly the spirit in which to treat a question involving the power of the National and State Sovereignties, and depending on the principles of constitutional law. To say that a transaction is a *borrowing*, or a mere *acknowledgment* of an existing indebtedness, according as the property of the creditor loaned happens at the moment to

be in the possession of the borrower or lender, is to reason on mere verbiage; to allow the use of *terms to blind* us to the real nature of the transaction—that transaction is in every essential feature a loan—the contract is a contract of loan. Suppose instead of these certificates of indebtedness the United States had offered 5-20 bonds at the same option of the creditor, would they have been taxable? and would a holder have to show not only that his means were invested in 5-20 bonds, but that the bonds he held were not primarily issued to public creditors? That could hardly be contended; and yet the case at bar is precisely the same.

The simple state of the case is this: The United States owed money to A and B, and it was inconvenient to pay it. If they had borrowed from C and D and paid A and B, the Court below concedes that the C and D loan could not be taxed, but A and B being willing to loan, the Court below says the United States cannot borrow of A and B on the same terms as of C and D because the State can tax the one, though not the other. The one is a contract—the other not. The one is a use of the power to borrow money—the other not. The one contract the State cannot tax—the other they *may* and thus prevent its ever being made.

The legislation of Congress from its earliest date is in accordance with the practical construction we have given the act.

In the first act of Congress (1 *Stat. at Large*, p. 139), for making provision for the payment of the debt of the United States—passed, August 4, 1790, a loan to the full amount of the domestic debt was authorized, and the sums subscribed to said loan were payable "in certificates already issued, § 3. To the subscribers were issued '*certificates*' bearing six per cent interest, §§ 4 & 5. And these certificates were called '*stock*,' § 7.

And these certificates probably formed the very 6 per cent. stocks held in *Weston* v. *City of Charleston* to be exempt.

In 1795 the same thing was done with reference to *foreign* creditors, 1 *Stat at Large*, 430, § 2.

And these certificates were again exchanged for others by act of February 11, 1807, 2 *Stat. at Large*, p. 415, §§ 1 and 2.

And these again exchanged for others by act of July 6, 1812, 2 *Stat. at Large*, p. 783, §§ 1 & 2.

In the act of November 15, 1814, we find a loan of $3,000,000 authorized, and the Secretary of the Treasury authorized to receive Treasury notes for subscriptions to said loans, 3 *Stat. at Large*, p. 145 § 4.

These Treasury notes had been issued in payment of *supplies or debts* due by the United States, precisely the same as checks of disbursing officers, 2 *Stat. at Large*, p. 767, § 4; *Ib.* 802, § 5; 3 *Ib.*, p. 101, §§ 5 & 6.

The first 5-20 Bonds, too, were issued indiscriminately for coin, old Treasury notes, and Legal Tender notes, and both Treasury notes and Legal Tender notes had been issued for supplies, &c.

12 *Stat. at Large, p.* 346, § 2;

and see a list of the Acts authorizing the issue of Treasury notes prior to 1844, in a note to *p.* 766, 2 *U. S. Stat. at Large.*

Six per cent. Stocks were again exchanged for five per cent. by the Act of April 20, 1822 (3 *Stat. at Large, p.* 663).

And in the Act of January 28, 1847 (9 *Stat. at Large*, 119), $23,000,000 of Treasury notes were authorized to be issued in *payment of debts* due by the United States to any creditor willing to receive the same (§ 4), "and were authorized to be converted into six per cent. certificates of funded stock" (*p.* 121, § 13); or the President was allowed, in his discretion, to borrow the $23,000,000, and issue the stock therefor, in the first instance (§ 16). Thus showing that Congress regarded the two processes as equivalent.

The same view was taken by Congress in the Act of June 30th, 1864 (13 *Stat. at Large, p.* 218), where the Secretary of the Treasury is authorized to borrow $400,000,000, and to issue the 10-40 Bonds; and was also authorized, in case he saw fit, to issue them or unsold

5-20's directly, in exchange for United States or Treasury notes, or these very certificates of indebtedness. If, then, these certificates of indebtedness are not exempt on the ground that the original indebtedness was not exempt, neither are 10-40's or 5-20's issued in exchange therefor exempt; and a person would have to prove not only that his capital was invested in 5-20's, but *also* that such 5-20's were not issued in exchange for certificates of indebtedness.

See also Act of December 17, 1860 (12 *Stat. at Large*, 121, § 4).

And without going through the whole financial statutes of the United States, it is sufficient to say that it has been the constant habit of the Government to receive in payment of subscriptions to its stock, or "certificates of stock" as they are invariably called, its own pre-existing obligations.

I submit that the certificates of indebtedness authorized by these acts are as much a contract for the loan of money as any other evidence of indebtedness ever issued to any persons under any act of Congress.

2d. The existing indebtedness was itself not taxable.

The Court below says that this will hardly be contended; but *it is* most earnestly and confidently contended.

In *Metropolitan Bank* v. *Van Dyck*, 27 *New York*, *p.* 491, Mr. Justice EMOTT, in discussing the meaning of the word "money" as used in different parts of the Constitution, says that in the clause authorizing the "coining of money" it means metallic money. In that authorizing the "borrowing of *money*," he says it means *capital*, and that issuing Treasury notes in exchange for capital or commodities is borrowing money under that clause.

Unless all the Treasury notes heretofore issued by the Government were issued without power, this construction of Mr. Justice EMOTT is undoubtedly correct.

Unless all the stock issued in exchange for prior stock

or indebtedness was unconstitutional, this construction is correct.

Whether that construction is right or not is, however, a matter of little importance.

Let us take the precise case put by the Court. Suppose the Government had years before purchased property, for which it still owed, but for which it had given no certificate or evidence of the debt. The Court below says *such* debt would be taxable by the State in the hands of the creditor, or reckoned a part of the creditor's taxable estate. We say it would not.

Let us see. At the time of the purchase, whenever it was, the transaction was simply this. The creditor or vendor sold and delivered certain property to the Government; the Government *promised to pay for it; it did not pay for it*, but it *promised* to pay for it. It is self-evident that if this promise is taxable against the estate of the creditor or vendor, such vendor will ask a larger price for his commodities than he otherwise would. He will effect this in one of three ways—he will either demand a larger gross price for his goods, or he will only agree to a shorter time for the deferred payment, or he will demand a higher rate of interest on the deferred payments. This is inevitable. We thus have the same result as in the case of a loan of coined money. "The "right to tax operates upon the power to purchase be- "fore it is exercised, and has a sensible influence on the "contract. The extent of this influence depends on the "will of a distinct Government. To any extent, however "inconsiderable, it is a burden on the operations of Gov- "vernment. It may be carried to an extent which shall "arrest them entirely," (*per Ch. J.* MARSHALL, 2 *Peters*, 468).

That the principle of the *Weston Case* is not confined to a contract of loan is settled in this Court in one of the very cases cited by the Court below, that of *Dobbins* v. *The Commissioners of Erie Co.*, 16 *Peters*, 449.

In that case the compensation paid to an United States officer was held not liable to taxation, and on the express ground that its effect would be to compel Congress to

pay a larger salary to its officers (*p.* 449), and virtually would allow the States to *collect their revenue out of the revenue of the United States* (*p.* 448).

Now it will be remarked, that Government no more than individuals wants money itself. It wants only land, commodities and the services of men. It borrows, or by taxes collects money, only because it is easier to use the medium of exchange in its transactions than it is directly to borrow, or by taxes collect those commodities, services, &c., in kind.

When we come to the real essence of the transaction, a borrowing of money and a purchase of commodities on credit are precisely the same thing. Money itself is a commodity, and one in universal demand, or it could not serve as a medium of exchange. The Government, then, buys money, and, in exchange therefor, gives its credit, in the shape of a promise to pay, and at such rate of interest as may be agreed on. It then expends the money so borrowed in the desired commodities or services of men, or it purchases those services or commodities direct, and, in exchange, gives its credit, in the shape of a promise to pay, with or without interest, and at such rate as may be agreed on.

If we give to money the definition given by Mr. Justice EMOTT, the transaction, in both cases, is a borrowing of money within the meaning of the clause of the Constitution referred to; if we do not, then the purchase of commodities or real estate on credit is a contract made under some other clause of the Constitution, by which the Government had a right to make it, and its credit, in such case, is equally exempt.

We have seen, by decided cases, that its contract for the loan of money, and also for the services of men, is exempt. Can any reason be shown why its contract for the purchase of commodities should not be in the same class?

Under these acts, these certificates may be issued in payment of salaries, as well as for other demands. Checks of disbursing officers are generally drawn in payment of salaries or wages. So much of the original indebtedness,

then, as was of that character is certainly exempt, on the direct authority of the Dobbins case.

To return to the case supposed by the Court below: the right of the State to tax such debt due from the United States for such property sold, would, undoubtedly, have affected the contract whenever it was made. For that reason, such credit cannot be taxed.

Suppose the State passed a law taxing *all contracts* made by an individual or corporation with the United States. Such a law would be clearly unconstitutional and void; because, on the most familiar principles of political economy, it would raise the price of every article sold to the United States precisely in the proportion of the amount of the tax. The seller would get the same price for his goods, and, in addition, the tax which he would pay over to the State. The State would thus "collect its revenues out of the revenues of the United States." 16 *Peters*, 448.

The only difference between such a law and the present one is, that the present law affects only such contracts as are entered into by the Government *on credit*. The tax is, in either case, a tax on the contract, and, as such, must be void.

The error of the Court below arises from an obliquity of vision, caused by their regarding the question from an erroneous stand-point.

The learned Justice speaks of a sale *long since* made on credit, and only a present taxation of that credit in the hands of the creditor. He thinks this *present*, just laid tax could not have affected *that contract*, made long before the tax was levied. At least, that is the line of his argument, as nearly as I have been able to make it out.

But the difficulty is, that the question is one of *power*. If the States have the *power* to tax such contracts, *the mere existence* of the power must affect the contracts, more or less. The moment a tax is laid, every future contract will be affected precisely in proportion to the amount of the tax. Before it is laid, they will be affected by the probability of its being laid.

If there is no power to lay a tax so as to affect *future*

contracts, it is clear that there is no power to tax one so as to affect only past contracts, and, *vice versa*, if there *is a power* to lay taxes so as to affect past contracts, there must be a power to affect future ones.

The Court below seems to have overlooked the obvious fact, that the contract of purchase, whenever entered into, must then have been affected by the State tax, or by the right to levy the State tax, if the right existed or exists.

The original contract, then, being exempt, the renewal of it, through these certificates, must be none the less so.

Third.—The certificates are exempt by the Statutes of the United States, and those statutes are constitutional.

(*a*) These statutes were passed in consequence of a suggestion that though the United States Securities might be exempt, when so declared by Congress, yet they were not until so declared.

The first is in the act of February 25th, 1862, and declares in general terms "that all stocks, bonds, and "other securities of the United States, held by indivi- "duals, corporations or associations within the United "States, shall be exempt from taxation by or under "State authority." (12*th U. S. Stat. at Large, p.* 346, § 2.)

The next statutory declaration is found in the act of March 3d, 1863, and the declaration of exemption is limited to the securities authorized to be issued by that act (12 *Stat., p.* 710, § 1). The same may be said of the act of March 3d, 1864 (13*th Stat., p.* 13, § 1).

On the 30th of June, 1864, an act was passed, authorizing the issue of the 10-40 bonds for cash, or in exchange for United States Notes, or "Treasury Notes, *Certificates of Indebtedness* or Certificates of Deposit issued under any

act of Congress," and declaring all bonds, treasury "notes and other obligations of the United States," to be exempt from State taxation. § 1.

And lest there might be some dispute about the meaning of the word "obligations," as therein or elsewhere used, Congress, by the 13th section of this act, declared that "the words 'obligation or other security,' of the "United States, shall be held to include and mean all "bonds, coupons, national currency, United States notes, "Treasury notes, fractional notes, checks for money of "authorized officers of the United States, CERTIFICATES "OF INDEBTEDNESS, certificates of deposit, stamps, and "other representatives of value, of whatever denomina-"tion, which have been or may be issued under any act "of Congress." (*13th Stat. at Large, p.* 222, § 13.)

The Court below does not directly hold that these certificates are not included within any of these exemption clauses, but says that it is by no means certain that they are so included.

It might perhaps be sufficient to remark, that notwithstanding the profuse citation of the United States Statutes in the opinion of the Court below, extending even to the acts of January 28, and March 2, 1865 (*13th Stat.*, 425 and 469), yet, singularly enough, the 13th section of the act of June 30th, 1864, which exempts them in *tolidem verbis* is omitted and not referred to.

Even if that section should be regarded as having changed the law, yet it would apply to the taxes paid in 1864; *i. e.*, to all but a small fraction of the claim of the relator. We would be entitled to bonds to the amount of $7,519 61, instead of $8,074 05.

But these certificates are clearly included in the general terms—"other security," and other "obligation," as used in the act of February 25, 1862.

The Court below claims that these general words should be restricted to the securities authorized by that act, because in all subsequent statutes, save that of June 30th, 1864, they are so specially restricted, and because if not so restricted, the special exemptions in the subsequent acts are unnecessary.

But on the same principle, the exemption declared in general words, in the act of June 30th, 1864, would be restricted to the securities authorized by that act, notwithstanding the *express* declaration of the 13th section, that it should include all issued under any past or future act, because in the acts of January 28th and March 3d, 1865, the securities authorized by those acts were again declared exempt.

Nor does the principle of restricting general words to the subject matter apply.

The only securities authorized by the act of February 25, 1862, were Legal Tender notes and 5–20 bonds. The notes were neither stocks nor bonds. The bonds did not need the words stocks, and it certainly was not introduced to cover them.

Now, as these notes and bonds are the only subject matter of the act, in the sense of the Court below, and as the exemption includes also *stocks*, it is clear that the subject matter of the act is different from the subject matter of the exemption clause, and that the latter is more extensive than the former.

The exemption was certainly intended to cover "*stocks*," which were not authorized by that act.

If these certificates of indebtedness are not "*stocks*," they are certainly securities in the nature of stocks.

In all the early loans of the government, the securities issued were called "Certificates of Stock," and the language generally used is to authorize the President "to cause to be constituted certificates of stock." (*2 l U. S. Stat. at Large, pp.* 656, 798, 610, 246; *vol. 3 l, pp.* 76, 111, 144, 227, 583, 636.

Are we so refined as to hold a "certificate of stock" exempt, and a "certificate of indebtedness" not?

The instruments, however, are covered by the words "other securities."

The words mean "evidences of indebtedness." These certificates do not differ in any essential feature from any other Government evidences of debt. They promise to pay a certain sum at a certain time, with a certain interest, and they are payable absolutely. What more can be asked of an evidence of indebtedness?

(*b*) The Court below, however, bases its decision on the unconstitutionality of the acts. It holds that these debts are property in the hands of the holders, which the State has a right to tax, and that no law of Congress can exempt such "property" from liability to taxation.

But the difficulty with this argument is that it assumes the whole question. These certificates are *not* "*property*" in the hands of its citizens. They are the *debts* of the United States, and as such *represent* the *credit* of the United States; for it is certain there can be no debt unless there is a corresponding credit. This credit of the United States, Congress has power to use either in borrowing money, or in exercising any other granted power in which its use may be necessary. It is then not only the right but the duty of Congress to do all it can to enhance that credit. Exemption from State taxation is unquestionably "*useful and conducive*" to that end. If so, on the most familiar principles of constitutional law such exemption is constitutional.

The credit of the United States is not a subject of State taxation, whether that credit is used in borrowing money or purchasing property, or hiring services of men, and for the simple reason that to make it so would be to allow the States to collect "their revenues out of the revenues of the United States."

As is well stated in the Dobbins' case, *persons* are not taxed or taxable; their *property* is taxed; and if in *form* the tax is capitation, it yet "regards the persons of men *only* because of their goods." 16 *Peters*, 446.

"Credit" or "credits" themselves are not property, and can pay no tax. If A owns property and sells it to B on credit, the taxable property of A and B is not increased. The tax may be levied in the first instance on vendor or vendee, or partly on each; but if levied at all on the vendor, it is evident its only effect is on the terms of the contract. The tax, and the whole tax, in whatever manner and in whatever portions paid, must still be produced from the property sold.

Apply the same rule to a sale to the United States, A sells goods to the Government on credit. The goods in the hands of the Government are not taxable. If you however, tax the debt in the hands of the seller he will ask more for the goods, and the Government must *give* the increased price, and raise it by taxation—so that the State raises its revenue "*out of the revenue and taxes of the United States.*"

By declaring its credit exempt, Congress has prevented this result, nothing more.

When Congress takes property for the use of the Government by purchase on credit—that particular property is no longer subject to State taxation—if the State could notwithstanding tax the debt owed for the same, the singular result would follow, that certain property had been taken from the total of taxable property; and yet, just as much remained as if none had been taken. When the general Government lays taxes, and pays for the property it has bought—then indeed, the total of the taxable property of the State is made good, except in so far as it has contributed its share to the National tax. To attempt to make the total of the taxable property the same before actual payment, is to attempt the problem of taking something away from a quantity, and leaving that quantity the same as before.

If we are correct in this reasoning, it is clear that the laws are constitutional.

Fourth.—Upon all grounds the certificates are exempt from taxation, and the judgment of the Court of Appeals should be reversed, and judgment ordered for the relator that a peremptory mandamus issue, as prayed for in the alternative writ.

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